No. 4361

United States

Circuit Court of Appeals

For the Ninth Circuit.

JOHN R. SOUZA,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

For Defendant and Plaintiff in Error:
GILMAN & HARNDEN, Esqs., Henshaw Bldg., Oakland, Calif.

For Plaintiff and Defendant in Error:
UNITED STATES ATTORNEY, S. F. Cal.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN R. SOUZA,
Defendant.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please make up the transcript on appeal of the above numbered and entitled case, for printing the record thereof for the Ninth Circuit Court of Appeals at San Francisco:

Indictment, plea, verdict, motion for new trial, order overruling motion for new trial, engrossed bill of exceptions, petition for writ of error, assignment of errors, allowance of

writ of error, writ of error, citation on writ of error, stipulation as to record, Clerk's certificate.

GILMAN & HARNDEN,
Attorneys for Appellant and Plaintiff in Error, John R. Souza.

[Endorsed]: Filed Sep. 4, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [1*]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

J. R. SOUZA,
Defendant.

INFORMATION.

At the March term of said court in the year of our Lord one thousand nine hundred and twenty-two.

BE IT REMEMBERED that Robert H. McCormack, Special Assistant United States Attorney-General, who for the United States in its behalf prosecutes in his own proper person, comes into court on this, the 20th day of April, 1922, and with leave of the said Court first having been had and

*Page-number appearing at foot of page of original certified Transcript of Record.

obtained, gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents: THAT

J. R. SOUZA,

hereinafter called the defendant, heretofore, to wit, on or about the 9th day of March, 1922, at 2202 E. 17th Street, Oakland, in the county of Alameda, in the Southern Division of the Northern District of California, and within the jurisdiction [2] of this Court, then and there being, did then and there wilfully, and unlawfully have in *their* possession certain property designed for the manufacture of liquor, to wit, 1 50-gallon still, 12 50-gallon barrels of mash, 1 pump, 2 electric motors and 1 electric fan, then and there intended for use in violating Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act, in the manufacture of intoxicating liquor containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said property by the said defendants was then and there prohibited, unlawful and in violation of Section 25 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

SECOND COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents: THAT

J. R. SOUZA,

hereinafter called the defendant, heretofore, to wit, on or about the 9th day of March, 1922, at 2202 E. 17th Street, Oakland, in the county of Alameda, in the Southern Division [3] of the Northern District of California, and within the jurisdiction of this Court, then and there being, did then and there wilfully and unlawfully possess certain intoxicating liquor, to wit, 50 gallons of jackass brandy, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Con-

gress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

THIRD COUNT.

And informant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents: THAT

J. R. SOUZA,

hereinafter called the defendant, heretofore, to wit, on or about the 9th day of March, 1922, at 2202 E. 17th Street, Oakland, in the county of Alameda, in the Southern Division of the Northern District of California, and within the jurisdiction [4] of this Court, then and there being, did then and there wilfully and unlawfully manufacture, certain intoxicating liquor, to wit: 50 gallons of jackass brandy, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the manufacturing of the said intoxicating liquor by the said defendant at the time and place aforesaid was then and there prohibited, unlawful

and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

ROBERT H. McCORMACK,
Special Asst. United States Attorney General.

[5]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

A. R. Shurtleff, being first duly sworn, deposes and says: That J. R. Souza on or about the 9th day of March, 1922, at 2202 E. 17th St., Oakland, in the county of Alameda, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did then and there possess property designed for the manufacture of intoxicating liquor, to wit, 1 50-gallon still, 12 50-gallon barrels of mash, 1 pump, 2 electric motors and 1 electric fan, then and there intended for use in violating Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act," in the manufacture of intoxicating liquor containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for use for beverage purposes.

That the possession of the said property by the said defendant at the time and place aforesaid was

then and there prohibited, unlawful and in violation of Section 25 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

And affiant on his oath aforesaid doth further state: That J. R. Souza, on or about the 9th day of March, 1922, at 2202 E. 17th St., Oakland, in the county of Alameda, in the Southern Division of the Northern District of California, and within the jurisdiction of this Court, did then and there possess and manufacture certain intoxicating liquor, to wit, 50 gallons of [6] jackass brandy, then and there containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes.

That the possession and manufacturing of the said intoxicating liquor by the said defendant at the time and place aforesaid, was then and there prohibited, unlawful and in violation of Section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the "National Prohibition Act."

A. R. SHURTLEFF.

Subscribed and sworn to before me this 19th day of April, 1922.

[Seal] C. M. TAYLOR,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed April 20, 1922. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [7]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Saturday, the 6th day of May, in the year of our Lord, one thousand nine hundred and twenty-two. Present: the Honorable MAURICE T. DOOLING, District Judge.

No. 11,010.

UNITED STATES OF AMERICA

vs.

J. R. SOUZA.

MINUTES OF COURT—MAY 6, 1922—ARRAIGNMENT AND PLEA.

This case came on regularly for arraignment of defendant upon the information filed herein against him. Said defendant was present in court with his attorney, duly arraigned upon said information, stated his true name to be as contained therein, waived formal reading thereof and thereupon plead "Not Guilty" of offense charged, which plea the Court ordered and the same is hereby entered. Further ordered case continued to May 27, 1922, to be set for trial. [8]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN R. SOUZA,

Defendant.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that heretofore the United States Attorney, in and for the Northern District of California, did file in the above-entitled action information against the defendant John R. Souza, and that thereafter the said John R. Souza appeared in court and upon being called to plead to said information pleaded not guilty, as shown by the records herein.

AND BE IT REMEMBERED that the defendant, John R. Souza, who will hereafter be called the defendant, having duly pleaded not guilty in the cause being at issue, the same coming on for trial on Wednesday, the 9th day of April, 1924, before the Honorable John S. Partridge, District Judge of said court, and a jury duly empanelled, the United States being represented by J. F. McDonald, Esq., Assistant United States Attorney, and the defendant being represented by D. L. Gilman and Emery

D. Harnden, of the legal firm of Gilman & Harnden. That thereafter the plaintiff, to maintain the issues on its part to be maintained introduced and offered in evidence the following testimony, to wit:

TESTIMONY OF A. R. SHURTLEFF, FOR THE GOVERNMENT.

A. R. SHURTLEFF, called for the United States, being sworn, testified as follows: [9]

Cross-examination.

I am a prohibition officer, and have been for the last four (4) years. I was in that service on the 9th day of March, 1922. That on that occasion I visited the premises located at 2202 East Seventeenth Street, in the city of Oakland, California, the premises owned by the defendant.

Mr. McDONALD.—Why did you visit those premises, Mr. Shurtleff?

WITNESS.—I would like to object to that question, unless it is predicated on something more than the fact of information, and I would like at this time to ask the witness, if I may, what kind of premises these were.

Mr. McDONALD.—I think you will have a chance to cross-examine the witness.

Mr. GILMAN.—I appreciate that, but it appears, apparently, that the premises were entered by virtue of some particular reason, I do not know whether by virtue of a search-warrant or otherwise, and I would like to know what kind of premises they were.

(Testimony of A. R. Shurtleff.)

The COURT.—That is a matter of cross-examination, and if the evidence is improper it will be stricken out and the jury told to disregard it. Go ahead.

At this point the witness testified further: The defendant lives on the premises. The still was found in a tunnel or dugout, as I would call it, underneath the house. I had visited the premises prior to this and had noticed the odor of distillation and fermenting mash around these premises. I am familiar with the odor of fermenting mash and the odor of distillation; a day or so before the search-warrant was secured for the place I visited the place one night, and I could smell odors of distillation and of mash. [10]

On March 9th I was accompanied by Agent Rinckel, Agent McMahon and Agent De Spain. We found a distillation plant. I think it was 50 gallon barrels, and we also found an electric fan, or a fan and the motors to run it, and an electric pump. This dugout—the reason for that was underneath the basement it is a very low basement under the house, I should say about maybe four or five feet; you have to stoop over to walk under it, and we entered from the side of the house, he had a trap-door at the side of the house; we crawled under there; we shoveled away the dirt and found a trap-door about two feet square and going down through this trap-door on a ladder, I guess about 10 feet deep underneath this house, this dirt floor, was this dugout that I described, and in the dugout

(Testimony of A. R. Shurtleff.)

was a complete distilling apparatus. This is the complete distilling plant that I refer to.

EXCEPTION No. 1.

Mr. McDONALD.—I will show you, Mr. Shurtleff, these bottles, and ask you—this one is labeled by yourself, I believe?

WITNESS.—Yes, sir, that is my writing.

Mr. McDONALD.—Do—where was that found?

WITNESS.—That was found in the dugout in the still-room.

Mr. McDONALD.—This is a sample of the fifty gallons of liquor?

WITNESS.—These are three samples. My initials on each.

Mr. McDONALD.—I will ask that these be marked for identification.

Mr. GILMAN.—If your Honor please, I would like to object to the questions asked, as well as to the introduction of any evidence at this time if it is predicated upon a search-warrant until we find out what kind of premises it was he [11] searched. He says a house the defendant lives in.

The COURT.—He did not live in the dugout, did he?

Mr. GILMAN.—No, your Honor, but he lived in the house that was over the dugout.

The COURT.—Overruled.

Mr. GILMAN.—Exception noted, please.

EXCEPTION No. II.

Mr. McDONALD.—You found these bottles? They were labeled in your presence?

(Testimony of A. R. Shurtleff.)

Witness SHURTLEFF.—Yes, sir.

Mr. McDONALD.—They have been in the custody of your superior ever since?

WITNESS.—Yes, sir.

Mr. McDONALD.—Did you know the defendant Souza before this case of March 9th, 1922?

WITNESS.—I did not.

Mr. McDONALD.—Had you ever been to his premises before?

WITNESS.—Oh, yes, I had been to his premises before.

Mr. McDONALD.—State the purpose and occasion of that visit.

Mr. GILMAN.—Objected to, on the ground that it is incompetent, irrelevant and immaterial, before the witness answers.

Mr. McDONALD.—If your Honor please, this charge involves a charge involving intent and I believe that we are entitled to show evidence of prior violations.

The COURT.—Overruled.

Mr. GILMAN.—Exception noted, please.

WITNESS.—(Continues.) We visited these premises on a prior case, to wit, May 9th, 1921. We found 10 or 12 50-gallon barrels of mash, 50-gallon stills set up and running, and stands and motors and found Mr. Souza in the dugout. [12]

EXCEPTION No. III.

Mr. McDONALD.—On this case, Mr. Shurtleff, why you found all this property in the same place?

WITNESS.—Yes, sir.

(Testimony of A. R. Shurtleff.)

Mr McDONALD.—That is all, Mr. Shurtleff.

Mr. GILMAN.—If your Honor please, I would like to make a motion to strike out the last answer of the witness, on the ground that it is incompetent, irrelevant and immaterial, and particularly I wish to call the Court's attention to the fact that is apparently with reference to some subsequent offense.

The COURT.—No, it is before. This was at the previous year. He found the first still in 1921.

Mr. McDONALD.—And his testimony is that he found this still in the same dugout in 1922.

Mr. GILMAN.—I would like to know just what case we are going to trial on.

Mr. McDONALD.—We are going to trial on case No. 110,110 (11,010).

Mr. GILMAN.—110,110 (11,010).

The COURT.—All right, motion denied.

Mr. GILMAN.—Exception noted, please.

On cross-examination the witness testified as follows:

These premises are located at 2202 East 17th Street, Oakland, California. At that time Mr. Souza resided there. I think I see his wife, see a lady there. I think it was his wife. I had a conversation with her. I think it is a home residence. It is not very far from the street, approximately five or ten feet on one side and maybe twenty on the end. Corner house. There is a lawn around it and a fence around the yard. I did not have to go into

(Testimony of A. R. Shurtleff.)

the house to get into [13] this dugout. If I have my directions right the house faces the south and we entered through a little door on the east side of the house from the outside of the house. We got into the yard through the front gate and walked around to the side of the house. A little door on the side of the house led under the house; beneath the house proper, and we crawled in underneath; we came to this dugout; the dugout was directly beneath the house proper. At the time we searched the premises March, 1922, I did not enter the residence there. Nor the other officers to my knowledge. It is not the fact that at the time I searched the premises I went into the residence, went into the home, into the house proper, that I went through the house proper; I went through a trap-door near to the house into this dugout. I do not know as to the trap-door, never called to my attention that there was a trap-door. I did not see a trap-door immediately above the entrance to the dugout which went into the residence proper. It isn't a fact that Commissioner Hardy went out there with me. Nor did he go with the other officers to my knowledge. I entered the premises by virtue of a search-warrant issued by Commissioner Hardy of Oakland. The still was in the dugout, as I call it. The only thing I could not figure out was that he dug this dugout under this board floor underneath the house for a still room only; in fact, he told me himself that it cost him about $1500 to fix the dugout and his property that he had there

(Testimony of A. R. Shurtleff.)

cost him about $1500. It was not used for other purposes. I saw nothing else there besides the property we took. It was not used as a cellar or part of the residence. This dugout or cellar or basement is immediately below the house proper; underneath the house proper, and within the fence that encircled around the house. We were compelled in order to go into the premises to go through a gate, the front gate, and [14] enter the premises; go to the side of the house; go through a small door; crawl on our hands and knees for some distance and then dig away some dirt and then enter this dugout; I say we entered there pursuant to that search-warrant. I or any other person to my knowledge did not purchase or buy any liquor from the defendant there; not that I know of. There was not a sale of intoxicating liquor upon the premises to my individual knowledge. I smelled the odor of distillation there some time previous to the raid, previous to March 9, 1922. I was told that there was liquor being manufactured on the premises. Upon that information and upon the information of my senses; that is my sense of smell, I went to the Commissioner and had a search-warrant issued for the basement, for this dugout. This hole down there was eight by ten or ten by twelve, something like that.

EXCEPTION No. IV.

Mr. GILMAN.—And did you know that there was liquor being manufactured on the premises?

Mr. SHURTLEFF.—I was told so.

(Testimony of A. R. Shurtleff.)

Mr. GILMAN.—You were told so, and upon that information, and upon the information of your senses, that is, your sense of smell, you went to the Commissioner and had a search-warrant issued. Is that correct?

WITNESS.—Yes, for the basement—for this dugout, yes.

Mr. GILMAN.—Have you that search-warrant?

WITNESS.—No, I have not.

Mr. GILMAN.—I think that is all.

Mr. McDONALD.—That is all.

Mr. GILMAN.—About how many rooms has this house, by the way?

WITNESS.—I do not know, I am sure. I was never in it. [15]

Mr. GILMAN.—Just one more question—about how big was this hole down there?

WITNESS.—I would say about eight by ten—ten by twelve—something like that.

Mr. GILMAN.—Yes.

Mr. McDONALD.—Will you take the stand please?

Mr. GILMAN.—If your Honor please, I would like at this time upon the statements of the agent who was just on the witness-stand (referring to witness Shurtleff) to ask the Court to exclude from evidence in this case any property, any liquor, any articles, any material, anything that may have been found in these premises in that particular place that was searched, upon the ground and upon the theory that the search-warrant in this case was

(Testimony of A. R. Shurtleff.)

based upon informattion and belief and that there was no proper cause for its issuance. That there has been no showing of any still (sale) upon the premises. That the premises are a private residence and are occupied by the defendant and his family as such. Therefore, I move you to exclude from the evidence the testimony of Agent Shurtleff, who was just on the witness-stand, as well as to exclude from the evidence any property or other things that were received there. I make that the basis of my motion, or, rather, I make the basis of my motion this: That it is a violation of the defendant's constitutional right and privilege. That there was an illegal and invalid search of his premises and his home. If your Honor wishes me to, I have a very recent authority from the Circuit Court. It is a Circuit Court decision and a recent authority that goes entirely into this question —exactly into this case.

The COURT.—Motion denied.

(Exception to this denial found on pages 14 to 16 of T. R.) [16]

TESTIMONY OF D. W. RINCKEL, FOR THE GOVERNMENT.

D. W. RINCKEL, testifying as a witness for the Government, being sworn, testified as follows:

I am a prohibition officer; have been for the last (4) four years. Accompanied Agent Shurtleff on the 9th day of March, we entered the front gate

(Testimony of D. W. Rinckel.)

at 2202 E. 17th Street, Oakland; walked around to the east side and crawled under the house and a small door was there, about a two by four door, and went up to the front of the house. We were unable at that time to observe any indications of where this pit was, although we could smell the fermentation of mash. We searched there for probably ten or fifteen minutes, until we found alongside of a post, cleverly concealed, two electric wires running down into the ground. We dug down alongside of those wires until we came to the top, which was some boards, and we cleaned off those boards, and finally found a trap-door. We went through the trap-door and down into a room and there we found mash, and about 50 gallons of jackass brandy. I have seen these bottles that have been introduced for the purpose of identification by the prosecution. Those were samples of that jackass brandy taken in my presence. The defendant was not there at that time. He was subsequently arrested. The premises as far as I know were occupied as a private dwelling. There was a woman, his wife, came down and asked us what our business was there. We showed our search-warrant and pursuant to that search-warrant we searched the premises. Witness never purchased any liquor on the premises and does not know of any liquor being sold there of his own knowledge. I went there with the other agents and did not go into the house proper. [17]

(Testimony of D. W. Rinckel.)

Cross-examination.

These premises are occupied as a private residence by the defendant. Had never purchased any liquor on the premises.

EXCEPTION No. V.

At the conclusion of D. W. Rinckel's testimony, the following took place:

Mr. GILMAN.—Just one minute until I make an objection if your Honor please, with reference to the testimony of the Agent Rinckel, who was just examined. If I may, I will make the same objection to his testimony that I make to the former witness' testimony. (Shurtleff). And may, if your Honor please—may an exception be understood now—that I may have an exception to all the rulings made by the Court.

The COURT.—There will be no such rule as that. The rule specifically provides that exceptions must be quoted to rulings.

Mr. GILMAN.—Well, then, at this time, if your Honor please, I will take an exception to the ruling of the Court with reference to the objection that I made formerly.

TESTIMONY OF E. B. McMAHON, FOR THE GOVERNMENT.

As a witness for the Government, being sworn, testified as follows:

I am a prohibition officer and accompanied Agent Rinckel, Shurtleff and the other agents to defendant's premises.

(Testimony of A. R. Shurtleff.)

At this point it was stipulated by defendant that certain liquor which the Government used as an exhibit contained 25 per cent of alcohol by volume.

TESTIMONY OF A. R. SHURTLEFF, FOR THE GOVERNMENT (RECALLED—CROSS-EXAMINATION).

Cross-examination.

Mr. GILMAN.—On March 9th, 1922, this still was not in operation, was it? [18]

WITNESS.—No.

Mr. GILMAN.—And it was not set up ready for use, was it?

WITNESS.—Well, with the crude still like he had, a fifty-gallon still with gooseneck and a drum, it does not take three minutes to set that up, if that is what you are getting at. All you need to do is to put a fire under it and fill it full of mash and it goes to work. I think the pieces of the still are all there.

EXCEPTION No. VI.

At the conclusion of cross-examination of Shurtleff the following took place:

Mr. GILMAN.—I did not note a while ago whether or not the Court overruled my exception or my motions on the question of the exclusion of the evidence.

The COURT.—Yes.

Mr. GILMAN.—The Court did overrule that, and I may have an exception to the rule?

(Testimony of A. R. Shurtleff.)

The COURT.—Yes.

Mr. McDONALD.—That is the Government's case, if your Honor please.

Mr. GILMAN.—Now, if your Honor please, at this time, may I make motion to quash the search-warrant and for the release and dismissal of the defendant, upon the ground that his constitutional rights have been violated, and that a search was made of his home without proof being obtained that liquor was sold on the premises or in the home, that the fourth and fifth amendments of the Constitution have been violated. That the evidence received be excluded. I think that is all.

The COURT.—Motion denied.

Mr. GILMAN.—Exception noted. And further, if your Honor please, that the search-warrant in this case was obtained [19] on information and belief.

The COURT.—Denied on that ground, too.

Mr. GILMAN.—Exception noted.

Thereupon the defendant Souza, to maintain the issues on his part to be maintained, introduced and offered in evidence the following testimony to wit:

TESTIMONY OF JOHN R. SOUZA, IN HIS OWN BEHALF.

JOHN R. SOUZA, called on his own behalf, being sworn, testified as follows:

I reside at 2202 East Seventeenth Street, with my family. We have nine in the family. There were

(Testimony of John R. Souza.)

two other families lived downstairs in two apartments. My home is a two-story house, with a basement underneath. There is an entrance to the basement on the side of the house and also through a little trap-door in one of the rooms on the second floor. The basement may be entered from either way. A fence surrounds the house, and the basement is directly under the house and within the space enclosed by the walls of the house. I have not sold any intoxicating liquor on the premises.

Cross-examination of Defendant Souza.

EXCEPTION No. VII.

Mr. McDONALD.—Mr. Souza, you owned this still that was found there?

Mr. GILMAN.—To which I object. It is not proper cross-examination.

The COURT.—Why?

Mr. GILMAN.—I put him on the witness-stand for two things: First, to prove the residence; second, that he did not sell liquor there. Those are the two questions I asked him.

The COURT.—The Supreme Court, in a case from this district, the case of Diggs and Caminetti, held distinctly that [20] when a defendant goes on the stand in his own behalf he opens up the whole subject. Overruled.

Mr. GILMAN.—Exception noted.

EXCEPTION No. VIII.

Mr. McDONALD.—You owned this still, didn't you, Mr. Souza?

WITNESS.—What is that?

(Testimony of John R. Souza.)

Mr. McDONALD.—That still that was there, that was your still, wasn't it?

WITNESS.—It wasn't a still. It was part of a still.

Mr. McDONALD.—Whatever it was, it was yours, wasn't it?

WITNESS.—Yes.

Mr. McDONALD.—And this jackass brandy, was yours, wasn't it?

WITNESS.—Yes.

Mr. McDONALD.—You were arrested in 1921, weren't you?

Mr. GILMAN.—Just a minute. To which I object as being incompetent, irrelevant and immaterial, and not proper cross-examination.

The COURT.—Overruled.

Mr. GILMAN.—Exception noted.

Mr. McDONALD.—Q. You were arrested in 1921 by Mr. Shurtleff, this man here? A. No.

Q. You say you were not arrested?

A. No, only in 1921.

Q. In 1921, on the 9th day of May, 1921?

A. Yes, I was.

Q. You were?

A. Yes; I do not know the day but I was arrested one time before.

Q. Yes, you were caught that time actually running a still, weren't you? A. Yes. [21]

EXCEPTION No. IX.

The COURT.—Did you (Souza) make this jackass brandy?

(Testimony of Johs R. Souza.)

WITNESS.—No, sir, that was given to me to finish up. That was not finished, that is, not ready to drink.

The COURT.—Did you have mash there?

WITNESS.—Yes, I had mash there.

The COURT.—And there was actually mash there present, was there?

WITNESS.—There was not mash for that purpose. I was trying to run that mash to get rid of it and run that little to make a little liquor for my own use.

Mr. GILMAN.—May it be understood that I may have an exception to the questions asked by the Court?

The COURT.—You may have an objection and an exception.

At the conclusion of all testimony the case was argued by the defendant's counsel, plaintiff's counsel waiving argument, and thereafter the Court instructed the jury, the jury retired for deliberation on the 9th day of April, 1924, and returned and filed a verdict finding the defendant guilty on each one of the three counts in the information. On the same day the Court rendered its sentence and judgment upon the defendant. That the said defendant hereby presents the foregoing as his amended bill of exceptions herein and respectfully asks that the same be allowed, signed and sealed and made a part of the records of this case.

Dated: July 31st, 1924.

GILMAN & HARNDEN,
Attorneys for Defendant. [22]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN R. SOUZA,

Defendant.

STIPULATION RE AMENDED BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the foregoing amended bill of exceptions is correct and the same may be signed, settled and allowed and sealed by the Court.

Dated, this 15th day of August, 1924.

STERLING CARR,
United States Attorney.
GILMAN & HARNDEN,
Attorneys for Defendant. [23]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN R. SOUZA,

Defendant.

ORDER SETTLING AMENDED BILL OF EXCEPTIONS.

This amended bill of exceptions having been duly presented to the Court within the time allowed by law and the rules of the Court and within the time extended by the Court by orders duly and regularly made, is now signed, sealed and made a part of the records of this case, and is allowed as correct.

Dated: This 15th day of August, 1924.

JOHN S. PARTRIDGE,
United States District Judge.

Due service and a receipt of a copy of the within amended bill of exceptions is hereby admitted this 5th day of August, 1924.

STERLING CARR,
By G. D. K.,
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 15, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [24]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 9th day of April, in the year of our Lord one thousand nine hundred and twenty-four. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 11,010.

UNITED STATES OF AMERICA

vs.

J. R. SOUZA.

MINUTES OF COURT—APRIL 9, 1924—TRIAL.

This case came on regularly this day for trial of defendant, J. R. Souza, upon information filed herein against him. Said defendant was present in court with his attorney, D. L. Gilman, Esq., J. F. McDonald, Esq., Asst. U. S. Atty., was present for and on behalf of United States.

Upon the calling of the case, all parties answering ready for trial, the Court ordered that the same proceed and that the jury-box be filled from the regular panel of trial jurors of this court. Accordingly, the hereinafter named persons, having been

duly called, sworn, examined, and accepted were sworn to try the defendant herein, viz.:

Frank K. Brown,	B. P. Bosworth.
H. J. Brown,	J. F. Bond.
C. L. McFarland.	Edson F. Adams.
V. B. Anderson.	Clarence E, Allen.
B. F. Brickel.	Ransom E. Beach.
Adolph C. Boldemann.	Theophilus Allen.

Mr. McDonald made statement to the Court and jury as to the nature of the case and called A. R. Shurtleff, D. W. Rinckel and E. B. McMahon, each of whom was duly sworn and examined on behalf of United States, and introduced in evidence U. S. Exhibit No. 1 and rested. [25]

Mr. Gilman made notions to exclude certain evidence and to quash search-warrant herein, which motions the Court ordered denied. Mr. Gilman then called the defendant, J. R. Souza, who was duly sworn and examined in his own behalf.

The case was then argued by Mr. McDonald and Mr. Gilman and submitted, whereupon the Court proceeded to instruct the jury herein, who, after being so instructed, retired at 4:35 P. M., to deliberate upon a verdict, and subsequently returned into court at 4:45 P. M., and upon being called all twelve (12) jurors answered to their names and were found to be present, and, in answer to question of the Court, stated they had agreed upon a verdict and presented a written verdict, which the Court ordered filed and recorded, viz.:

"We, the Jury, find as to the defendant at the bar as follows:

Guilty on 1st Count.
Guilty on 2d Count.
Guilty on 3d Count.

ADOLPH C. BOLDEMANN,
Foreman."

Court ordered jurors discharged from further consideration of this case and from attendance upon the Court until Apr. 10, 1924, at 10 A. M.

Defendant was then called for judgment, fully informed by the Court of the nature of the information filed herein against him, of his arraignment, plea, trial, and the verdict of the jury. Defendant was then asked if he had any legal cause to show why judgment should not be entered herein and thereupon, no sufficient cause appearing why judgment should not be pronounced, the Court ordered that defendant, J. R. Souza, for offense of which he stands convicted, pay a fine in the sum of $500.00 as to First Count, fine of $500.00 as to Second Count, and be imprisoned for a period of 1 year in the county jail, county of San Francisco, State of California, [26] as to Third Count of said information. Ordered that said defendant stand committed to the custody of U. S. Marshal to execute said judgment, and that a commitment issue.

Ordered that the amount of bond for the release and appearance of defendant upon writ of error herein be and the same is hereby fixed in the sum of $2500.00.

Further ordered that the U. S. Exhibit in this case be withdrawn from the files and returned to the United States Attorney. Accordingly said exhibit was delivered to Mr. McDonald in open court. [27]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA

vs.

JOHN R. SOUZA.

(VERDICT.)

We, the jury, find as to the defendant at bar as follows:

Guilty on 1st count.

Guilty on 2d count.

Guilty on 3d count.

ADOLPH C. BOLDEMANN,

Foreman.

[Endorsed]: Filed April 9, 1924, at 4 o'clock and 45 minutes P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [28]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 11,010.

Conv. Viol. National Prohibition Act—Oct. 28, 1919.

THE UNITED STATES OF AMERICA

vs.

J. R. SOUZA.

JUDGMENT ON VERDICT OF GUILTY.

J. F. McDonald, Esquire, Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the information filed on the 20th day of April, 1924, charging him with the crime of violating National Prohibition Act; of his arraignment and plea of not guilty; of his trial and the verdict of the jury on the 9th day of April, 1924, to wit:

"We, the Jury, find as to the defendant at the bar, as follows;

Guilty on 1st Count.

Guilty on 2d Count.

Guilty on 3d Count.

ADOLPH C. BOLDEMANN,

Foreman."

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown

or appearing to the Court, thereupon the Court rendered its judgment;

THAT WHEREAS, the said J. R. Souza having been duly convicted in this Court of the crime of violating National Prohibition Act;

IT IS THEREFORE ORDERED AND ADJUDGED that the said J. R. Souza pay a fine in the sum of Five Hundred ($500.00) Dollars as to the 1st Count of the information, pay a fine in the sum of Five Hundred ($500.00) Dollars as to the 2d Count of the information, and that he be imprisoned in the county jail, county of San Francisco, California, for a period of one (1) year as to the 3d Count of the information. [29]

Judgment entered this 9th day of April, A. D. 1924.

WALTER B. MALING,
Clerk.
By C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 16, *Judge* and Decrees, at page 176. [30]

In the Southern Division of the United States Court, in and for the Northern District of California.

No. 11,010.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN R. SOUZA,

Defendant.

MOTION FOR NEW TRIAL.

Now comes John R. Souza, defendant in the above-entitled case, and by his attorneys, Gilman & Harnden, moves the Court to set aside the verdict rendered herein and to grant a new trial of said cause, and for reasons therefor, shows the Court the following:

I.

That the verdict in said cause is contrary to law.

II.

That the verdict in said cause was not supported by the evidence in said case.

III.

That the evidence in said cause is insufficient to justify said verdict.

IV.

That the Court erred upon the trial of said cause in deciding questions of law arising during the course of the trial, and that the Court further erred in permitting the introduction of evidence over the

defendant's objections, which errors were duly excepted to.

Dated: at San Francisco, California, this 18th day of April, 1924.

GILMAN & HARNDEN,
Attorneys for Defendant. [31]

In the Southern Division of the United States Court, in and for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN R. SOUZA,
Defendant.

DEFENDANT'S POINTS AND AUTHORITIES ON MOTION FOR A NEW TRIAL AND IN ARREST OF JUDGMENT.

The Court erred in denying defendant's motion to exclude evidence on account of the illegal search of the defendant's home and the seizure of the property taken therefrom at the time of said search.

U. S. vs. Gouled, 255 U. S. 298.
U. S. vs. Amos, 255 U. S. 315.
U. S. vs. Silverthorn Lmbr. Co., 251 U. S. 115.
U. S. vs. Boyd, 116 U. S. 616.
U. S. vs. Mitchell, 274 Fed. 148.

U. S. vs. Falloco, 277 Fed. 75.

U. S. vs. Pardini, Court Files 10,922.

Amendments 4 and 5 of U. S. Constitution.

Section 6 of Act Supplemental to National Prohibition Act as approved Nov. 23, 1921, in Chapter 134, Statutes of 1921, Sections 13 and 19 of Articles 1 of the Constitution of the State of California.

In the case of U. S. vs. Pardini, Judge Dooling said:

"Under a State search-warrant the home of the defendant was searched by police officers for certain liquors theretofore stolen from one, Hart; the liquors sought were not found; but other liquor not stolen and belonging to defendant was found and seized. There was no warrant for such seizure nor any authority for same. The motion for return of the property so seized will be granted."

Veeder vs. U. S. (252 Fed. 414), C. C. of A. 7th Circuit.

U. S. vs. Ray and Schultz (275 Fed. 1004).

Giles vs. U. S., 284 Fed. 208, C. C. of Appeals, 1st District.

Ripper vs. U. S. 178 Fed. 24, C. C. of Appeals.

U. S. vs. Pittoto, 267 Fed. 603 D. C.

U. S. vs. Tureaud (C. C.), 20 Fed. 621.

U. S. vs. Armstrong, 275 Fed. 506 (D. C.).

U. S. vs. Yuck Kee, 281 Fed. 228. [32]

U. S. vs. Kelih, 277 Fed. 490.

U. S. vs. Palma, 295 U. S. 149.

284 Fed. 208.

288 Fed. 831.

U. S. vs. Jajesuric, 285 Fed. 789.

The evidence was insufficient to justify the verdict inasmuch as the premises searched constitute part of a private residence, and there was no proof of sale in violation of the National Prohibition Act, and such proof is necessary under the ruling of the last above cited cases.

The Court erred in allowing to be introduced in evidence the certain liquor seized at the time of the illegal search over defendant's objection.

The Court erred in allowing witnesses, who made the illegal search and seizure, to testify as to what they found by virture of said search and seizure over defendant's objection.

The Court erred in permitting the cross-examination, over defendant's objection, relative to matters not brought out on direct examination.

The Court erred in ruling, over the defendant's objection, that the defendant, when he took the stand in his own behalf, was subjected to be examined on any and every phase of the case, irrespective of whether such phases of the case, upon which cross-examination was sought, were even touched, upon the direct examination. Such is not the ruling of the case of United States vs. Digs et al., 220 Fed. 545, 242 U. S. Reports 470.

The Supreme Court said in considering the above case as follows:

> "We think the better reasoning supports the view sustained in the Court of Appeals in this

case, which is that where the accused takes the stand in his own behalf and voluntarily testifies for himself, he may not stop short in his testimony by omitting and failing to explain incriminating circumstances and events already in evidence in [33] which he participated and concerning which he is fully informed, without subjecting his silence to the inferences to be naturally drawn from it."

The Federal Court stated in deciding the above case as follows:

Federal Case states, page 551.

"We take this to mean that waiver of the constitutional privilege of a defendant in a criminal case is a complete waiver, and places the defendant in the same attitude as that of a defendant in a civil action who testifies in his own behalf."

Respectfully submitted,

GILMAN & HARNDEN,

Attorneys for John R. Souza.

[Endorsed]: Filed Apr. 19, 1924. Walter B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [34]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Saturday, the 19th day of April, in the year of our Lord one thousand nine hundred and twenty-four. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 11,010.

UNITED STATES OF AMERICA

vs.

J. R. SOUSA.

MINUTES OF COURT—APRIL 19, 1924—ORDER DENYING MOTION FOR NEW TRIAL.

In this case E. D. Harnden, Esq., attorney for defendant, moved the Court for order for new trial, which motion the Court ordered denied. [35]

In the Southern Division of the United States Court, in and for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN R. SOUZA,

Defendant.

PETITION FOR WRIT OF ERROR.

Now comes the above-named defendant and by his attorneys, Gilman & Harnden, respectfully shows:

That heretofore and on the 9th day of April, 1924, a jury in the above-entitled court and cause returned and filed herein a verdict finding the above-named defendant guilty of the charge set forth in the indictment heretofore filed in the above-entitled court and cause, and against the defendant herein, charging him with the violation of the National Prohibition Act. That thereafter and on the 9th day of April, 1924, the defendant was by order and sentence of the above-entitled court and in said cause, sentenced to one year in county jail of San Francisco County, California, together with a fine of One Thousand Dollars ($1,000).

Your petitioner herein, the above-named defendant, feeling himself aggrieved by the said verdict and said judgment and the said sentence of the court entered herein as aforesaid, and by the orders and ruling of said Court and proceedings therein, now herewith petitions this Court for an order allowing him to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit under the laws of the United States and in accordance with the procedure of said [36] court in such cases made and provided to the end that the said proceedings as herein recited and as more fully set forth in the assignments of error presented here-

with may be reviewed and the manifest error appearing from the face of the record of said proceeding may be by said Circuit Court of Appeals corrected and that for such purpose a writ of error and citation thereon should issue as by the law and the ruling of the court as provided, whereupon the premises considered, your petitioner prays that the writ of error do issue to the end that the said proceedings of the United States District Court for the Northern District of California, First Division, may be reviewed and corrected, the said errors in said record being herewith assigned and presented herewith; that pending the final determination of said writ of error by said Appellate Court an order be made and entered herein that all further proceedings shall be suspended and stayed until the determination of said writ of error by said Court of Appeals.

GILMAN & HARNDEN,
Attorneys for Petitioner, the Plaintiff in Error.

[Endorsed]: Filed Apr. 19, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [37]

In the Southern Division of the United States Court, in and for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN R. SOUZA,

Defendant.

ASSIGNMENT OF ERROR.

Now comes the defendant in the above-entitled cause, John R. Souza, and plaintiff in error herein, in connection with his petition for a "Writ of Error" in this cause, assigns the following errors which said defendant avers occurred on the trial thereof, and upon which he relies to reverse the judgment and sentence entered herein as appears of record, to wit:

I.

The Court erred in denying the motion made by defendant and plaintiff in error during the trial of said cause to exclude from evidence certain property seized, and knowledge obtained, by federal prohibition officers as a result of a search and seizure made upon the basement of the home of this defendant and plaintiff in error; said motion for exclusion of evidence being based on the ground that the search-warrant, alleged to have been used

by the federal agents, was obtained on information and belief only, and without probable cause, and without proof of a sale of intoxicating liquor in or upon the premises of the defendant, which were searched, and upon which the seizure was made. To which ruling defendant and plaintiff in error duly excepted.

II.

The Court erred in denying the motion made by defendant and plaintiff in error, during the trial of said cause, to [38] exclude the testimony of federal agents, Shurtleff, Rinckel and McMahon, relative to any information or knowledge which they obtained by virtue of the search and seizure made upon defendant's property on the 9th day of March, 1922, for the reason that said search and seizure was made upon an unlawful search-warrant, and in violation of defendant's rights under the Fourth and Fifth Amendments to the Constitution of the United States. To which ruling the defendant and plaintiff in error duly excepted.

III.

The Court erred in denying defendant's and plaintiff in error's motion to exclude from evidence the property seized and the knowledge and information obtained, by the Federal agents, at the time of the search and seizure; said motion being made at the earliest possible moment after being advised, by the testimony of Agent Shurtleff, that the defendant's premises had been entered by virtue of a search-warrant, which search-warrant was obtained

upon information and belief and without proof of a sale of intoxicating liquor made on said premises, as provided under Section 25 of the National Prohibition Act, which premises the evidence showed to be occupied by defendant exclusively as defendant's home. To which ruling defendant and plaintiff in error duly excepted.

IV.

The Court erred in refusing to grant the motion of defendant and plaintiff in error, made during the trial, to quash the search-warrant, and for the release and dismissal of the defendant upon the ground that his constitutional rights had been violated; that the search was made of his home without proof being obtained that intoxicating liquor had been sold on said premises, or in said home, and on the further ground that [39] the search-warrant in this case was obtained upon information and belief, and without probable cause, thereby violating defendant's rights under the Fourth and Fifth Amendments to the Constitution of the United States. To which ruling the defendant and plaintiff in error duly excepted.

V.

The Court erred in denying the motion of the defendant and plaintiff in error to strike out all the evidence given by Federal Agents, Shurtleff, Rinckel and McMahon, upon the ground that said evidence was incompetent, irrelevant and immaterial, and is all secured in violation of defendant's rights guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States.

The substance of said evidence, as testified to by Federal Agent Shurtleff, that sometimes previous to March 9, 1922, he smelled the odor of distillation while on or near defendant's premises; that he did not smell said distillation at the time he made the raid; that he was informed that defendant was manufacturing intoxicating liquor on defendant's premises, and upon that information he secured a search-warrant for the basement or "dugout" located under the premises occupied by this defendant exclusively as defendant's home. The only knowledge that Federal Agents, Rinckel and McMahon had was obtained at the time of the search and seizure, March 9, 1922, and all that they testified to was relative to what took place at the time of the search and seizure, which was to the effect that they made an entrance into defendant's basement or "dugout," as sometimes termed by them, by virtue of crawling on their hands and knees under the defendant's house and then digging a hole through the wall of said basement through which hole they entered the basement and found therein a still, some [40] mash and intoxicating liquor, which still and intoxicating liquor was taken with them. At the time of the trial they identfied the liquor exhibited by the Government, in this case, as part of that taken from defendant's premises on March 9, 1922. To said ruling on said motion defendant and plaintiff in error duly excepted.

VI.

The Court erred in admitting evidence over de-

fendant's objection relative to other visits to defendant's premises made by Federal Agents Shurtleff on May 9, 1921.

VII.

The Court erred in permitting the prosecuting attorney to cross-examine defendant, relative to matters which had not been touched upon in defendant's direct examination, over defendant's objection to said cross-examination. In making said ruling the Court said (Transcript, page 19): "The Supreme Court, in a case from this district, the case of Diggs and Caminetti, held distinctly that when a defendant goes on the stand in his own behalf, he opens up the whole subject." To which ruling the defendant and plaintiff in error duly excepted.

VIII.

The Court erred in overruling defendant's objection to the prosecuting attorney's cross-examination of the defendant, relative to defendant's arrest in 1921, there being no testimony introduced by the defendant, on direct examination, relative to any prior arrest or anything pertaining thereto, or in any way connected therewith. To which ruling defendant and plaintiff in error duly excepted.

IX.

The Court erred in personally cross-examining the defendant, [41] over defendant's objection, relative to matters not touched upon, or in any way related to, or pertaining to anything testified to by the defendant on direct examination. To which

ruling defendant and plaintiff in error duly excepted.

X.

The Court erred in submitting this cause to the jury for the reason that there was no evidence upon which a conviction could be sustained, for the reason that no part of the mash, still or intoxicating liquor, alleged to have been seized at the time of the raid, was introduced in evidence.

XI.

The Court erred in failing to instruct the jury relative to the defendant being presumed innocent.

XII.

The Court erred in denying defendant's motion for a new trial herein, which motion was made in due time as the jury had returned a verdict of guilty upon the following grounds:

(1) That the verdict in said cause is contrary to law.

(2) That the verdict in said cause was not supported by the evidence in said case.

(3) That the evidence in said cause is insufficient to justify said verdict.

(4) That the Court erred upon the trial of said cause in deciding questions of law during the course of the trial, and that the Court further erred in permitting the introduction of evidence over defendant's objections, which errors were duly excepted to.

XIII.

The Court erred in imposing the sentence herein for the [42] reasons above set forth.

WHEREFORE, the defendant and plaintiff in error, John R. Souza, prays that the judgment of said Court be reversed, and this cause remanded to the said District Court with directions to dismiss the same, and discharge the said defendant and plaintiff in error from custody and exonerate the sureties of defendant's bail bond.

JOHN R. SOUZA,
Defendant.
GILMAN & HARNDEN,
Attorneys for Defendant.

Due service and receipt of a copy of the within assignment of errors is hereby admitted this 5 day of June, 1924.

J. T. WILLIAMS,
Attorney for Pff.

[Endorsed]: Filed at 1 o'clock and 15 min. P. M. Jun. 5, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [43]

In the Southern Division of the United States Court, in and for the Northern District of California, First Division.

No. 11,010.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN R. SOUZA,
Defendant.

ORDER ALLOWING WRIT OF ERROR.

On this 19th day of April, 1924, came the defendant, John R. Souza, and filed herein and presented to the Court his petition praying for the allowance of the writ of error intended to be urged by him, which petition was accompanied by an assignment of errors relied upon by the defendant, praying also that the transcript of the record and proceeding and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit and that such order and further proceedings may be had as may be proper in the premises. That all further proceedings shall be stayed until the determination of the said writ of error by the said Circuit Court of Appeals, now in consideration of said petition and being fully advised in the premises, the Court does hereby allow the said writ of error, and

IT IS HEREBY ORDERED that the defendant be admitted to bail pending the decision upon said writ of error in the sum of Twenty-five Hundred ($2500) Dollars, the bond for costs for the writ of error is hereby fixed in the sum of Two Hundred and Fifty ($250) Dollars for the defendant and all further proceedings are hereby suspended herein until the determination of said writ of error by said Circuit Court of Appeals.

JOHN S. PARTRIDGE,
United States District Judge. [44]

Dated: San Francisco, California, this 19th day of April, 1924.

[Endorsed]: Filed Apr. 19, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [45]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON WRIT OF ERROR.

I, Walter B. Maling, Clerk U. S. District Court, for the Northern District of California, do hereby certify that the foregoing 45 pages, numbered from 1 to 45, inclusive, contain a full, true and correct transcript of the record and proceedings, in the case of United States of America vs. John R. Souza, No. 11,010, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error (copy of which is embodied herein) and the instructions of the attorney for defendant and plaintiff in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of sixteen dollars and forty-five cents ($16.45) and that the same has been paid to me by the attorney for the plaintiff in error herein.

Annexed hereto are the original writ of error, return to writ of error, and original citation on writ of error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Ditrict Court, this 11th day of October, A. D. 1924.

[Seal] WALTER B. MALING,
Clerk.
By C. M. Taylor,
Deputy Clerk. [46]

WRIT OF ERROR.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Southern Division, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between United States of America, defendant in error, a manifest error hath happened, to the great damage of the said John R. Souza, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same

at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the 15th day of August, in the year of our Lord one thousand nine hundred and twenty-four.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern Dist. of California.

By C. M. Taylor,
Deputy Clerk.

Allowed by:

JOHN S. PARTRIDGE,
U. S. District Judge.

Service of within writ of error admitted this 15th day of August, 1924.

STERLING CARR,
United States Attorney.
By GARTON D. KEYSTON,
Asst. U. S. Atty.

[Endorsed]: No. 11,010. United States District Court for the Northern District of California, Southern Division. United States of America, Plaintiff in Error, vs. John R. Souza, Defendant in

Error. Writ of Error. Filed Aug. 15, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [47]

RETURN TO WRIT OF ERROR.

The answer of the Judges of the United States District Court, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 15th day of August, A. D. 1924, duly lodged in the case in this court for the within named defendant in error.

By the Court.

[Seal] WALTER B. MALING,
Clerk, U. S. District Court, Northern District of California.

By C. M. Taylor,
Deputy Clerk. [48]

CITATION ON WRIT OF ERROR.

UNITED STATES OF AMERICA,—ss.

The President of the United States, to United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein John R. Souza is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable JOHN S. PARTRIDGE, United States District Judge for the Northern District of California, this 15th day of August, A. D. 1924.

JOHN S. PARTRIDGE,
United States District Judge.

United States of America,—ss.

On this 15th day of August, in the year of our Lord one thousand nine hundred and twenty-four, personally appeared before me, ———, the sub-

scriber, ———, and makes oath that he received a true copy of the within citation on Aug. 15, 1924.

STERLING CARR,
United States Attorney.
By GARTON D. KEYSTON,
Asst. U. S. Atty.

[Endorsed]: No. 11,010. United States District Court for the Northern District of California. United States of America, Plaintiff in Error, vs. John R. Souza, Defendant in Error. Citation on Writ of Error. Filed Aug. 15, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [49]

[Endorsed]: No. 4361. United States Circuit Court of Appeals for the Ninth Circuit. John R. Souza, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Received October 11, 1924.

F. D. MONCKTON,
Clerk.

Filed October 16, 1924.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.
By Paul P. O'Brien,
Deputy Clerk.